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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/284,160	10/25/1999	AHARON MEIR EYAL	U012190-3	1964

7590

07/20/2005

LADAS & PARRY
26 WEST 61ST STREET
NEW YORK, NY 10023

EXAMINER

OH, TAYLOR V

ART UNIT	PAPER NUMBER
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1625

DATE MAILED: 07/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No. 09/284,160	Applicant(s) EYAL ET AL.	
	Examiner Taylor Victor Oh	Art Unit 1625	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 10 June 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: _____.
- Claim(s) objected to: _____.
- Claim(s) rejected: 35-53.
- Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see pages 2-5.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☐ Other: _____.

It is noted that applicants have filed an Amendment after the Final Rejection on 6/10/05; applicants' attorney has addressed the issues of record. The proposed amendment will be entered ;however, it is not in a condition for allowance.

The Status of Claims

Claims 35-53 are pending.

Claims 35-53 have been rejected.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The rejection of Claims 35-53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baniel et al (U.S. 5,510,526) is maintained for the reasons of the record on 3/08/05.

Applicants' attorney has addressed the issues of record; however, has not rebutted the claim rejections 35-53 under 35 USC 103 (a).

Applicants' Argument

1. The applicants argue the following issue:

1. the examiner conceded that the instant invention differs from Baniel in that the ratio between free lactic acid and lactate salt is mentioned ; the basic extractant in step(a) is recycled from step (d) previously ,but now the examiner contends that the instant invention differs from Baniel only in that the ratio between free lactic acid and lactate salt is mentioned.
2. Baniel teaches none of the steps(d) and (e) of claim 35 ,which state :
(d) extracting said aqueous raffinate solution separated in step (b) with said stripped extractant formed in step (c) to form a lactic acid-containing stripped extractant; and (e) using said lactic acid –containing stripped extractant form in step(d) as said basic amine extractant in step (a);
furthermore, there is no discussion in Baniel about contacting the raffinate stream with the stripped extractant.

The applicants' argument have been noted, but these arguments are not persuasive.

Art Unit: 1625

First, with regard to applicants' first and second arguments, the Examiner has noted applicants' argument. However, after a close examination of the Baniel prior art, the prior art does teach that the basic extractant in step(a) can be recycled from step (d) when the passages of the Baniel are reviewed; for example, the unit 18 is part of an extraction system which includes the extractant regeneration unit 22, the organic stream 21 and the extractant recycle stream 24; within the unit 18, the lactate feed solution is combined with an extractant comprised of at least onewater immiscible trialkyl amine(see col. 6, lines 34-40).

Furthermore, regarding the Baniel's lack of teaching about the contact between the raffinate stream and the stripped extractant, the examiner disagrees. On the contrary to applicants' argument, there is an indirect teaching of the contact between the raffinate stream and the stripped extractant as Baniel prior art expressly teaches that it is also possible, if desired, to recycle all or part of the aqueous raffinate(filtrate) back into the system through the stream #16 (conversion and extraction) (see col. 8, lines 25-31), which turns into either the stream 20 or the stream 21 to join the extractant regeneration which is part of the extraction system (the unit 18) comprising the extractant recycle stream 24 (see the second page of a flow chart of Baniel). Therefore, the prior art is still relevant to the claimed invention.

Therefore, the Examiner maintains the rejection of all the claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Taylor Victor Oh whose telephone number is 571-272-0689. The examiner can normally be reached on 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cecilia Tsang can be reached on 571-272-0562. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Taylor Victor Oh
7/16/05

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